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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,243	01/24/2002	Gerold Tebbe	011310	2695
22876	7590	05/06/2004	EXAMINER	
FACTOR & LAKE, LTD 1327 W. WASHINGTON BLVD. SUITE 5G/H CHICAGO, IL 60607			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/048,243	Applicant(s) TEBBE, GEROLD	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed February 13, 2004, has been entered. The specification and claims 14, 16, and 17 have been amended as requested. New claims 28-51 have been added.
2. Said amendment to the specification is sufficient to withdraw the objection to the specification as set forth in section 1 of the last Office Action. Additionally, said amendment is sufficient to withdraw the 112, 2nd rejection set forth in sections 2-5 of the last Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 is indefinite for the use of the phrase "wooly pile that is substantially higher than the pile of a normal velour material." It is unclear what is encompassed by a "normal velour material," and, as such, by a "wooly pile that is substantially higher." The phrase is a relative description which renders the scope of the claim indefinite.

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Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 11, 12, 18, 19, 23, 25, and 26 stand rejected under 35 USC 102(e) as being anticipated by US 5,879,487 issued to Ravella, as set forth in section 7 of the last Office Action.

7. Claims 28, 29, 32, 35-37, 40, 43-45, 48, and 51 are rejected under 35 USC 102(e) as being anticipated by US 5,879,487 issued to Ravella.

The scope of said claims are analogous to the scope of claims 11, 12, 19, and 25, with the exception of the preamble limitations directed to intended use. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Additionally, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Thus, claims 28, 29, 32, 35-37, 40, 43-45, 48, and 51 are rejected for reasons analogous to claims 11, 12, 19, and 25.

8. Claims 11, 12, 18-20, and 23 stand rejected under 35 USC 102(b) as being anticipated by DE 3 640 374 issued to Tebbe, as set forth in section 8 of the last Office Action.

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9. Claims 28, 29, 32, 33, 36, 37, 40, 41, 44, 45, 48, and 49 are rejected under 35 USC 102(b) as being anticipated by DE 3 640 374 issued to Tebbe.

The scope of said claims are analogous to the scope of claims 11, 12, 19, and 20, with the exception of the preamble limitations directed to intended use. As noted above, the said limitations are not accorded patentable weight at this time. Thus, claims 28, 29, 32, 33, 36, 37, 40, 41, 44, 45, 48, and 49 are rejected for reasons analogous to claims 11, 12, 19, and 20, as set forth in the previous paragraph.

Claim Rejections - 35 USC § 103

10. Claim 24 stands rejected under 35 USC 103(a) as being unpatentable over the cited Ravella reference, as set forth in section 10 of the last Office Action.

11. Claim 27 stands rejected under 35 USC 103(a) as being unpatentable over the cited Ravella reference in view of GB 2335627 issued to Hedenberg et al., as set forth in section 11 of the last Office Action.

12. Claims 25-27 stand rejected under 35 USC 103(a) as being unpatentable over the cited Tebbe reference in view of the cited Ravella and Hedenberg references, as set forth in section 12 of the last Office Action.

13. Claim 20 stands rejected under 35 USC 103(a) as being unpatentable over the cited Ravella reference in view of the cited Tebbe reference, as set forth in section 13 of the last Office Action.

14. Claims 33, 41, and 49 are rejected under 35 USC 103(a) as being unpatentable over the cited Ravella reference in view of the cited Tebbe reference.

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The scope of said claims are analogous to the scope of claim 20, with the exception of the preamble limitations directed to intended use. As noted above, the said limitations are not accorded patentable weight at this time. Thus, claims 33, 41, and 49 are rejected for reasons analogous to claim 20, as set forth in the previous paragraph.

15. Claims 11-17, 23, and 24 stand rejected under 35 USC 103(a) as being unpatentable over US 5,612,113 issued to Irwin, Sr., as set forth in section 14 of the last Office Action.

16. Claims 28-31, 36-39, and 44-47 are rejected under 35 USC 103(a) as being unpatentable over US 5,612,113 issued to Irwin, Sr.

The scope of said claims are analogous to the scope of claims 11-14, with the exception of the preamble limitations directed to intended use. As noted above, the said limitations are not accorded patentable weight at this time. Thus, claims 28-31, 36-39, and 44-47 are rejected for reasons analogous to claims 11-14, as set forth in the previous paragraph.

17. Claims 20-22 stand rejected under 35 USC 103(a) as being unpatentable over the cited Irwin reference in view of JP 05-051870 issued to Kawasaki and US 4,908,252 issued to Carnahan et al., as set forth in section 15 of the last Office Action.

18. Claims 33, 34, 41, 42, 49, and 50 are rejected under 35 USC 103(a) as being unpatentable over the cited Irwin reference in view of JP 05-051870 issued to Kawasaki and US 4,908,252 issued to Carnahan et al.

The scope of said claims are analogous to the scope of claims 20 and 21, with the exception of the preamble limitations directed to intended use. As noted above, the said limitations are not accorded patentable weight at this time. Thus, claims 33, 34, 41, 42, 49, and 50 are rejected for reasons analogous to claims 20 and 21, as set forth in the previous paragraph.

Response to Arguments

19. Applicant's arguments filed with the present amendment have been fully considered but they are not persuasive.

20. Applicant traverses the above rejections by asserting that the primary references of Ravella, Tebbe, and Irwin do not teach a flexible network that carries the liquid-impermeable layer that is flexible enough for incorporation into garments and bedding (Amendment, page 16, 2nd paragraph). Specifically, applicant states the liquid-impermeable layer of Irwin is a secondary carpet backing.

21. In response, it is first reiterated that Ravella teaches a slip-resistant outer layer that carries the liquid-impermeable layer (col. 9, line 66-col. 10, line 11). Since the invention of Ravella has the same general structure and application as the present invention (i.e., an absorbent article such as incontinence products, surgical dressings, and sanitary products) and since these articles are readily known in the art as requiring flexibility, it is reasonable to presume that the carrier layer of Ravella is inherently flexible.

22. Similarly, the Tebbe reference teaches absorbent inlays that are affixed to clothing (i.e., flexible). While the Irwin reference does teach a carpet backing, it is also readily known that carpet backings inherently are flexible (e.g., carpet rolls). Hence, applicant's argument is unpersuasive since the cited primary references all teach flexible materials.

23. Additionally, applicant traverses the Irwin rejection by asserting that, since the purpose of the Irwin invention is to prevent the infiltration of fluid spilled onto the carpet to the lower surfaces of the carpet, the fibers of Irwin are actually liquid-repellent and not absorbent (Amendment, page 16, 3rd paragraph). The examiner respectfully asserts applicant has misread

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said Irwin reference. Irwin's objective is to provide a carpet with a liquid-impermeable barrier layer that prevent spilled liquids from penetrating *through the carpet to the floor beneath said carpet* (abstract). Said objective is obtained by providing a liquid-impermeable film backing layer to the absorbent carpet structure, rather than by providing liquid-repellent or non-absorbent carpet fibers, as applicant contends. Thus, Irwin clearly teaches the claimed liquid-absorbent layer and a liquid-impermeable layer.

24. Furthermore, applicant traverses the above rejections by asserting "the function of the present invention ensures that the claimed invention is neither anticipated nor made obvious by any prior art" (Amendment, paragraph spanning pages 16-17). In response, it is argued that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Thus, applicant's arguments are unpersuasive and the above art rejections are maintained.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
May 3, 2004